

section] shall apply to fiscal years beginning after September 30, 1989.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective as if included in the amendments made by section 9201 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, see section 2006(c) of Pub. L. 100-647, set out as a note under section 4132 of this title.

EFFECTIVE DATE

Section 9202(c) of Pub. L. 100-203 provided that: “The amendments made by this section [enacting this section] shall take effect on January 1, 1988.”

§ 9511. Repealed. Pub. L. 105-178, title IX, § 9011(a), June 9, 1998, 112 Stat. 508]

Section, added Pub. L. 102-240, title VIII, § 8003(a), Dec. 18, 1991, 105 Stat. 2205; amended Pub. L. 105-130, § 9(c), Dec. 1, 1997, 111 Stat. 2561, related to National Recreational Trails Trust Fund.

Subchapter B—General Provisions

Sec.	
9601.	Transfer of amounts.
9602.	Management of Trust Funds.

§ 9601. Transfer of amounts

The amounts appropriated by any section of subchapter A to any Trust Fund established by such subchapter shall be transferred at least monthly from the general fund of the Treasury to such Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such section. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(Added Pub. L. 97-119, title I, § 103(a), Dec. 29, 1981, 95 Stat. 1638.)

§ 9602. Management of Trust Funds

(a) Report

It shall be the duty of the Secretary of the Treasury to hold each Trust Fund established by subchapter A, and (after consultation with any other trustees of the Trust Fund) to report to the Congress each year on the financial condition and the results of the operations of each such Trust Fund during the preceding fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(b) Investment

(1) In general

It shall be the duty of the Secretary of the Treasury to invest such portion of any Trust Fund established by subchapter A as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

- (A) on original issue at the issue price, or
- (B) by purchase of outstanding obligations at the market price.

(2) Sale of obligations

Any obligation acquired by a Trust Fund established by subchapter A may be sold by the Secretary of the Treasury at the market price.

(3) Interest on certain proceeds

The interest on, and the proceeds from the sale or redemption of, any obligations held in a Trust Fund established by subchapter A shall be credited to and form a part of the Trust Fund.

(Added Pub. L. 97-119, title I, § 103(a), Dec. 29, 1981, 95 Stat. 1638.)

Subtitle J—Coal Industry Health Benefits

Chapter		Sec. ¹
99.	Coal industry health benefits	9701

CHAPTER 99—COAL INDUSTRY HEALTH BENEFITS

Subchapter		Sec. ¹
A.	Definitions of general applicability	9701
B.	Combined benefit fund	9702
C.	Health benefits of certain miners	9711
D.	Other provisions	9721

Subchapter A—Definitions of General Applicability

Sec.	
9701.	Definitions of general applicability.

§ 9701. Definitions of general applicability

(a) Plans and funds

For purposes of this chapter—

(1) UMWA Benefit Plan

(A) In general

The term “UMWA Benefit Plan” means a plan—

- (i) which is described in section 404(c), or a continuation thereof; and
- (ii) which provides health benefits to retirees and beneficiaries of the industry which maintained the 1950 UMWA Pension Plan.

(B) 1950 UMWA Benefit Plan

The term “1950 UMWA Benefit Plan” means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired before 1976.

(C) 1974 UMWA Benefit Plan

The term “1974 UMWA Benefit Plan” means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired on or after January 1, 1976.

(2) 1950 UMWA Pension Plan

The term “1950 UMWA Pension Plan” means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired before 1976.

(3) 1974 UMWA Pension Plan

The term “1974 UMWA Pension Plan” means a pension plan described in section 404(c) (or a

¹ Section numbers editorially supplied.

continuation thereof), participation in which is substantially limited to individuals who retired in 1976 and thereafter.

(4) 1992 UMWA Benefit Plan

The term “1992 UMWA Benefit Plan” means the plan referred to in section 9713A.¹

(5) Combined Fund

The term “Combined Fund” means the United Mine Workers of America Combined Benefit Fund established under section 9702.

(b) Agreements

For purposes of this section—

(1) Coal wage agreement

The term “coal wage agreement” means—

(A) the National Bituminous Coal Wage Agreement, or

(B) any other agreement entered into between an employer in the coal industry and the United Mine Workers of America that required or requires one or both of the following:

(i) the provision of health benefits to retirees of such employer, eligibility for which is based on years of service credited under a plan established by the settlers and described in section 404(c) or a continuation of such plan; or

(ii) contributions to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or any predecessor thereof.

(2) Settlers

The term “settlers” means the United Mine Workers of America and the Bituminous Coal Operators’ Association, Inc. (referred to in this chapter as the “BCOA”).

(3) National Bituminous Coal Wage Agreement

The term “National Bituminous Coal Wage Agreement” means a collective bargaining agreement negotiated by the BCOA and the United Mine Workers of America.

(c) Terms relating to operators

For purposes of this section—

(1) Signatory operator

The term “signatory operator” means a person which is or was a signatory to a coal wage agreement.

(2) Related persons

(A) In general

A person shall be considered to be a related person to a signatory operator if that person is—

(i) a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator;

(ii) a trade or business which is under common control (as determined under section 52(b)) with such signatory operator; or

(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible bene-

ficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

(B) Time for determination

The relationships described in clauses (i), (ii), and (iii) of subparagraph (A) shall be determined as of July 20, 1992, except that if, on July 20, 1992, a signatory operator is no longer in business, the relationships shall be determined as of the time immediately before such operator ceased to be in business.

(3) 1988 agreement operator

The term “1988 agreement operator” means—

(A) a signatory operator which was a signatory to the 1988 National Bituminous Coal Wage Agreement,

(B) an employer in the coal industry which was a signatory to an agreement containing pension and health care contribution and benefit provisions which are the same as those contained in the 1988 National Bituminous Coal Wage Agreement, or

(C) an employer from which contributions were actually received after 1987 and before July 20, 1992, by the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan in connection with employment in the coal industry during the period covered by the 1988 National Bituminous Coal Wage Agreement.

(4) Last signatory operator

The term “last signatory operator” means, with respect to a coal industry retiree, a signatory operator which was the most recent coal industry employer of such retiree.

(5) Assigned operator

The term “assigned operator” means, with respect to an eligible beneficiary defined in section 9703(f), the signatory operator to which liability under subchapter B with respect to the beneficiary is assigned under section 9706.

(6) Operators of dependent beneficiaries

For purposes of this chapter, the signatory operator, last signatory operator, or assigned operator of any eligible beneficiary under this chapter who is a coal industry retiree shall be considered to be the signatory operator, last signatory operator, or assigned operator with respect to any other individual who is an eligible beneficiary under this chapter by reason of a relationship to the retiree.

(7) Business

For purposes of this chapter, a person shall be considered to be in business if such person conducts or derives revenue from any business activity, whether or not in the coal industry.

(8) Successor in interest

(A) Safe harbor

The term “successor in interest” shall not include any person who—

(i) is an unrelated person to an eligible seller described in subparagraph (C); and

(ii) purchases for fair market value assets, or all of the stock, of a related person

¹ See References in Text note below.

to such seller, in a bona fide, arm's-length sale.

(B) Unrelated person

The term “unrelated person” means a purchaser who does not bear a relationship to the eligible seller described in section 267(b).

(C) Eligible seller

For purposes of this paragraph, the term “eligible seller” means an assigned operator described in section 9704(j)(2) or a related person to such assigned operator.

(d) Enactment date

For purposes of this chapter, the term “enactment date” means the date of the enactment of this chapter.

(Added Pub. L. 102-486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3037; amended Pub. L. 109-432, div. C, title II, §211(d), Dec. 20, 2006, 120 Stat. 3023.)

REFERENCES IN TEXT

Section 9713A, referred to in subsec. (a)(4), probably should be a reference to section 9712 which provided for the establishment of the United Mine Workers of America 1992 Benefit Plan, referred to in that section as the “1992 UMWA Benefit Plan”. No section 9713A of this title has been enacted.

The date of the enactment of this chapter, referred to in subsec. (d), is the date of the enactment of Pub. L. 102-486, which was approved Oct. 24, 1992.

AMENDMENTS

2006—Subsec. (c)(8). Pub. L. 109-432 added par. (8).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. C, title II, §211(e), Dec. 20, 2006, 120 Stat. 3023, provided that: “The amendments made by this section [amending this section and sections 9704, 9711, and 9712 of this title] shall take effect on the date of the enactment of this Act [Dec. 20, 2006], except that the amendment made by subsection (d) [amending this section] shall apply to transactions after the date of the enactment of this Act.”

FINDINGS AND DECLARATION OF POLICY

Section 19142 of Pub. L. 102-486 provided that:

“(a) FINDINGS.—The Congress finds that—

“(1) the production, transportation, and use of coal substantially affects interstate and foreign commerce and the national public interest; and

“(2) in order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

“(b) STATEMENT OF POLICY.—It is the policy of this subtitle [subtitle C (§§19141-19143) of title XIX of Pub. L. 102-486, enacting this subtitle, amending sections 1231 and 1232 of Title 30, Mineral Lands and Mining, and enacting provisions set out as a note under section 1 of this title]—

“(1) to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry;

“(2) to allow for sufficient operating assets for such plans; and

“(3) to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.”

Subchapter B—Combined Benefit Fund

Part

- I. Establishment and Benefits.
- II. Financing.
- III. Enforcement.
- IV. Other Provisions.

PART I—ESTABLISHMENT AND BENEFITS

Sec.

- 9702. Establishment of the United Mine Workers of America Combined Benefit Fund.
- 9703. Plan benefits.

§ 9702. Establishment of the United Mine Workers of America Combined Benefit Fund

(a) Establishment

(1) In general

As soon as practicable (but not later than 60 days) after the enactment date, the persons described in subsection (b) shall designate the individuals to serve as trustees. Such trustees shall create a new private plan to be known as the United Mine Workers of America Combined Benefit Fund.

(2) Merger of retiree benefit plans

As of February 1, 1993, the settlors of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall cause such plans to be merged into the Combined Fund, and such merger shall not be treated as an employer withdrawal for purposes of any 1988 coal wage agreement.

(3) Treatment of plan

The Combined Fund shall be—

(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)),

(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

(4) Tax treatment

For purposes of this title, the Combined Fund and any related trust shall be treated as an organization exempt from tax under section 501(a).

(b) Board of trustees

(1) In general

For purposes of subsection (a), the board of trustees for the Combined Fund shall be appointed as follows—

(A) 2 individuals who represent employers in the coal mining industry shall be designated by the BCOA;

(B) 2 individuals designated by the United Mine Workers of America; and

(C) 3 individuals selected by the individuals appointed under subparagraphs (A) and (B).

(2) Successor trustees

Any successor trustee shall be appointed in the same manner as the trustee being succeeded. The plan establishing the Combined Fund shall provide for the removal of trustees.

(3) Special rule

If the BCOA ceases to exist, any trustee or successor under paragraph (1)(A) shall be designated by the 3 employers who were members of the BCOA on the enactment date and who have been assigned the greatest number of eligible beneficiaries under section 9706.

(c) Plan year

The first plan year of the Combined Fund shall begin February 1, 1993, and end September 30, 1993. Each succeeding plan year shall begin on October 1 of each calendar year.

(Added Pub. L. 102-486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3040; amended Pub. L. 109-432, div. C, title II, §213(a), Dec. 20, 2006, 120 Stat. 3027.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109-432 reenacted heading without change and amended text of subsec. (b) generally. Prior to amendment, text contained provisions which related to: in par. (1), appointment of one trustee by the BCOA, one by the three employers having the greatest number of eligible beneficiaries under section 9706, two by the United Mine Workers of America, and three by the persons otherwise appointed; in par. (2), successor trustees and removal of trustees; and in par. (3), special rules relating to designation of trustees or successor trustees if the BCOA should cease to exist and designation of the initial trustee.

§ 9703. Plan benefits**(a) In general**

Each eligible beneficiary of the Combined Fund shall receive—

- (1) health benefits described in subsection (b), and
- (2) in the case of an eligible beneficiary described in subsection (f)(1), death benefits coverage described in subsection (c).

(b) Health benefits**(1) In general**

The trustees of the Combined Fund shall provide health care benefits to each eligible beneficiary by enrolling the beneficiary in a health care services plan which undertakes to provide such benefits on a prepaid risk basis. The trustees shall utilize all available plan resources to ensure that, consistent with paragraph (2), coverage under the managed care system shall to the maximum extent feasible be substantially the same as (and subject to the same limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

(2) Plan payment rates**(A) In general**

The trustees of the Combined Fund shall negotiate payment rates with the health care services plans described in paragraph (1) for each plan year which are in amounts which—

- (i) vary as necessary to ensure that beneficiaries in different geographic areas have access to a uniform level of health benefits; and
- (ii) result in aggregate payments for such plan year from the Combined Fund

which do not exceed the total premium payments required to be paid to the Combined Fund under section 9704(a) for the plan year, adjusted as provided in subparagraphs (B) and (C).

(B) Reductions

The amount determined under subparagraph (A)(ii) for any plan year shall be reduced—

- (i) by the aggregate death benefit premiums determined under section 9704(c) for the plan year, and
- (ii) by the amount reserved for plan administration under subsection (d).

(C) Increases

The amount determined under subparagraph (A)(ii) shall be increased—

- (i) by any reduction in the total premium payments required to be paid under section 9704(a) by reason of transfers described in section 9705,
- (ii) by any carryover to the plan year from any preceding plan year which—
 - (I) is derived from amounts described in section 9704(e)(3)(B)(i), and
 - (II) the trustees elect to use to pay benefits for the current plan year, and
- (iii) any interest earned by the Combined Fund which the trustees elect to use to pay benefits for the current plan year.

(3) Qualified providers

The trustees of the Combined Fund shall not enter into an agreement under paragraph (1) with any provider of services which is of a type which is required to be certified by the Secretary of Health and Human Services when providing services under title XVIII of the Social Security Act unless the provider is so certified.

(4) Effective date

Benefits shall be provided under paragraph (1) on and after February 1, 1993.

(c) Death benefits coverage**(1) In general**

The trustees of the Combined Fund shall provide death benefits coverage to each eligible beneficiary described in subsection (f)(1) which is identical to the benefits provided under the 1950 UMWA Pension Plan or 1974 UMWA Pension Plan, whichever is applicable, on July 20, 1992. Such coverage shall be provided on and after February 1, 1993.

(2) Termination of coverage

The 1950 UMWA Pension Plan and the 1974 UMWA Pension Plan shall each be amended to provide that death benefits coverage shall not be provided to eligible beneficiaries on and after February 1, 1993. This paragraph shall not prohibit such plans from subsequently providing death benefits not described in paragraph (1).

(d) Reserves for administration

The trustees of the Combined Fund may reserve for each plan year, for use in payment of the administrative costs of the Combined Fund, an amount not to exceed 5 percent of the pre-

miums to be paid to the Combined Fund under section 9704(a) during the plan year.

(e) Limitation on enrollment

The Combined Fund shall not enroll any individual who is not receiving benefits under the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of July 20, 1992.

(f) Eligible beneficiary

For purposes of this subchapter, the term “eligible beneficiary” means an individual who—

(1) is a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or

(2) on such date was eligible to receive, and receiving, benefits in either such plan by reason of a relationship to such retiree.

(Added Pub. L. 102-486, title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3041.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PART II—FINANCING

Sec.

9704. Liability of assigned operators.

9705. Transfers.

9706. Assignment of eligible beneficiaries.

§ 9704. Liability of assigned operators

(a) Annual premiums

Each assigned operator shall pay to the Combined Fund for each plan year beginning on or after February 1, 1993, an annual premium equal to the sum of the following three premiums—

(1) the health benefit premium determined under subsection (b) for such plan year, plus

(2) the death benefit premium determined under subsection (c) for such plan year, plus

(3) the unassigned beneficiaries premium determined under subsection (d) for such plan year.

Any related person with respect to an assigned operator shall be jointly and severally liable for any premium required to be paid by such operator.

(b) Health benefit premium

For purposes of this chapter—

(1) In general

The health benefit premium for any plan year for any assigned operator shall be an amount equal to the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries assigned to such operator under section 9706.

(2) Per beneficiary premium

The Commissioner of Social Security shall calculate a per beneficiary premium for each plan year beginning on or after February 1, 1993, which is equal to the sum of—

(A) the amount determined by dividing—

(i) the aggregate amount of payments from the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for health benefits (less reimbursements but including administrative costs) for the plan year beginning July 1, 1991, for all individuals covered under such plans for such plan year, by

(ii) the number of such individuals, plus

(B) the amount determined under subparagraph (A) multiplied by the percentage (if any) by which the medical component of the Consumer Price Index for the calendar year in which the plan year begins exceeds such component for 1992.

(3) Adjustments for medicare reductions

If, by reason of a reduction in benefits under title XVIII of the Social Security Act, the level of health benefits under the Combined Fund would be reduced, the trustees of the Combined Fund shall increase the per beneficiary premium for the plan year in which the reduction occurs and each subsequent plan year by the amount necessary to maintain the level of health benefits which would have been provided without such reduction.

(c) Death benefit premium

The death benefit premium for any plan year for any assigned operator shall be equal to the applicable percentage of the amount, actuarially determined, which the Combined Fund will be required to pay during the plan year for death benefits coverage described in section 9703(c).

(d) Unassigned beneficiaries premium

(1) Plan years ending on or before September 30, 2006

For plan years ending on or before September 30, 2006, the unassigned beneficiaries premium for any assigned operator shall be equal to the applicable percentage of the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries who are not assigned under section 9706 to any person for such plan year.

(2) Plan years beginning on or after October 1, 2006

(A) In general

For plan years beginning on or after October 1, 2006, subject to subparagraph (B), there shall be no unassigned beneficiaries premium, and benefit costs with respect to eligible beneficiaries who are not assigned under section 9706 to any person for any such plan year shall be paid from amounts transferred under section 9705(b).

(B) Inadequate transfers

If, for any plan year beginning on or after October 1, 2006, the amounts transferred under section 9705(b) are less than the amounts required to be transferred to the Combined Fund under subsection (h)(2)(A) or (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232)),¹ then the unassigned beneficiaries

¹ So in original. Second closing parenthesis probably should not appear.

premium for any assigned operator shall be equal to the operator's applicable percentage of the amount required to be so transferred which was not so transferred.

(e) Premium accounts; adjustments

(1) Accounts

The trustees of the Combined Fund shall establish and maintain 3 separate accounts for each of the premiums described in subsections (b), (c), and (d). Such accounts shall be credited with the premiums received and amounts transferred under section 9705(b) and debited with expenditures allocable to such premiums.

(2) Allocations

(A) Administrative expenses

Administrative costs for any plan year shall be allocated to premium accounts under paragraph (1) on the basis of expenditures (other than administrative costs) from such accounts during the preceding plan year.

(B) Interest

Interest shall be allocated to the account established for health benefit premiums.

(3) Shortfalls and surpluses

(A) In general

Except as provided in subparagraph (B), if, for any plan year, there is a shortfall or surplus in any premium account, the premium for the following plan year for each assigned operator shall be proportionately reduced or increased, whichever is applicable, by the amount of such shortfall or surplus. Amounts credited to an account from amounts transferred under section 9705(b) shall not be taken into account in determining whether there is a surplus in the account for purposes of this paragraph.

(B) Exception

Subparagraph (A) shall not apply to any surplus in the health benefit premium account or the unassigned beneficiaries premium account which is attributable to—

(i) the excess of the premiums credited to such account for a plan year over the benefits (and administrative costs) debited to such account for the plan year, but such excess shall only be available for purposes of the carryover described in section 9703(b)(2)(C)(ii) (relating to carryovers of premiums not used to provide benefits), or

(ii) interest credited under paragraph (2)(B) for the plan year or any preceding plan year.

(C) No authority for increased payments

Nothing in this paragraph shall be construed to allow expenditures for health care benefits for any plan year in excess of the limit under section 9703(b)(2).

(f) Applicable percentage

For purposes of this section—

(1) In general

The term “applicable percentage” means, with respect to any assigned operator, the percentage determined by dividing the number of

eligible beneficiaries assigned under section 9706 to such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993).

(2) Annual adjustments

In the case of any plan year beginning on or after October 1, 1994, the applicable percentage for any assigned operator shall be redetermined under paragraph (1) by making the following changes to the assignments as of October 1, 1993:

(A) Such assignments shall be modified to reflect any changes during the period beginning October 1, 1993, and ending on the last day of the preceding plan year pursuant to the appeals process under section 9706(f).

(B) The total number of assigned eligible beneficiaries shall be reduced by the eligible beneficiaries of assigned operators which (and all related persons with respect to which) had ceased business (within the meaning of section 9701(c)(6)) during the period described in subparagraph (A).

(C) In the case of plan years beginning on or after October 1, 2007, the total number of assigned eligible beneficiaries shall be reduced by the eligible beneficiaries whose assignments have been revoked under section 9706(h).

(g) Payment of premiums

(1) In general

The annual premium under subsection (a) for any plan year shall be payable in 12 equal monthly installments, due on the twenty-fifth day of each calendar month in the plan year. In the case of the plan year beginning February 1, 1993, the annual premium under subsection (a) shall be added to such premium for the plan year beginning October 1, 1993.

(2) Deductibility

Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

(h) Information

The trustees of the Combined Fund shall, not later than 60 days after the enactment date, furnish to the Commissioner of Social Security information as to the benefits and covered beneficiaries under the fund, and such other information as the Secretary² may require to compute any premium under this section.

(i) Transition rules

(1) 1988 agreement operators

(A) 1st year costs

During the plan year of the Combined Fund beginning February 1, 1993, the 1988 agreement operators shall make contributions to the Combined Fund in amounts necessary to pay benefits and administrative costs of the Combined Fund incurred during such year, reduced by the amount transferred to the Combined Fund under section 9705(a) on February 1, 1993.

² So in original. Probably should be “Commissioner”.

(B) Deficits from merged plans

During the period beginning February 1, 1993, and ending September 30, 1994, the 1988 agreement operators shall make contributions to the Combined Fund as are necessary to pay off the expenses accrued (and remaining unpaid) by the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, reduced by the assets of such plans as of such date.

(C) Failure

If any 1988 agreement operator fails to meet any obligation under this paragraph, any contributions of such operator to the Combined Fund or any other plan described in section 404(c) shall not be deductible under this title until such time as the failure is corrected.

(D) Premium reductions**(i) 1st year payments**

In the case of a 1988 agreement operator making contributions under subparagraph (A), the premium of such operator under subsection (a) shall be reduced by the amount paid under subparagraph (A) by such operator for the plan year beginning February 1, 1993.

(ii) Deficit payments

In the case a 1988 agreement operator making contributions under subparagraph (B), the premium of such operator under subsection (a) shall be reduced by the amounts which are paid to the Combined Fund by reason of claims arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims based on the “evergreen clause” found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan, and which are allocated to such operator under subparagraph (E).

(iii) Limitation

Clause (ii) shall not apply to the extent the amounts paid exceed the contributions.

(iv) Plan years

Premiums under subsection (a) shall be reduced for the first plan year for which amounts described in clause (i) or (ii) are available and for any succeeding plan year until such amounts are exhausted.

(E) Allocations of contributions and refunds

Contributions under subparagraphs (A) and (B), and premium reductions under subparagraph (D)(ii), shall be made ratably on the basis of aggregate contributions made by such operators under the applicable 1988 coal wage agreements as of January 31, 1993.

(2) 1st plan year

In the case of the plan year of the Combined Fund beginning February 1, 1993—

(A) the premiums under subsections (a)(1) and (a)(3) shall be 67 percent of such premiums without regard to this paragraph, and

(B) the premiums under subsection (a) shall be paid as provided in subsection (g).

(3) Startup costs

The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall pay the costs of the Combined Fund incurred before February 1, 1993. For purposes of this section, such costs shall be treated as administrative expenses incurred for the plan year beginning February 1, 1993.

(j) Prepayment of premium liability**(1) In general**

If—

(A) a payment meeting the requirements of paragraph (3) is made to the Combined Fund by or on behalf of—

- (i) any assigned operator to which this subsection applies, or
- (ii) any related person to any assigned operator described in clause (i), and

(B) the common parent of the controlled group of corporations described in paragraph (2)(B) is jointly and severally liable for any premium under this section which (but for this subsection) would be required to be paid by the assigned operator or related person,

then such common parent (and no other person) shall be liable for such premium.

(2) Assigned operators to which subsection applies**(A) In general**

This subsection shall apply to any assigned operator if—

(i) the assigned operator (or a related person to the assigned operator)—

- (I) made contributions to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for employment during the period covered by the 1988 agreement; and
- (II) is not a 1988 agreement operator,

(ii) the assigned operator (and all related persons to the assigned operator) are not actively engaged in the production of coal as of July 1, 2005, and

(iii) the assigned operator was, as of July 20, 1992, a member of a controlled group of corporations described in subparagraph (B).

(B) Controlled group of corporations

A controlled group of corporations is described in this subparagraph if the common parent of such group is a corporation the shares of which are publicly traded on a United States exchange.

(C) Coordination with repeal of assignments

A person shall not fail to be treated as an assigned operator to which this subsection applies solely because the person ceases to be an assigned operator by reason of section 9706(h)(1) if the person otherwise meets the requirements of this subsection and is liable for the payment of premiums under section 9706(h)(3).

(D) Controlled group

For purposes of this subsection, the term “controlled group of corporations” has the meaning given such term by section 52(a).

(3) Requirements

A payment meets the requirements of this paragraph if—

(A) the amount of the payment is not less than the present value of the total premium liability under this chapter with respect to the Combined Fund of the assigned operators or related persons described in paragraph (1) or their assignees, as determined by the operator's or related person's enrolled actuary (as defined in section 7701(a)(35)) using actuarial methods and assumptions each of which is reasonable and which are reasonable in the aggregate, as determined by such enrolled actuary;

(B) such enrolled actuary files with the Secretary of Labor a signed actuarial report containing—

(i) the date of the actuarial valuation applicable to the report; and

(ii) a statement by the enrolled actuary signing the report that, to the best of the actuary's knowledge, the report is complete and accurate and that in the actuary's opinion the actuarial assumptions used are in the aggregate reasonably related to the experience of the operator and to reasonable expectations; and

(C) 90 calendar days have elapsed after the report required by subparagraph (B) is filed with the Secretary of Labor, and the Secretary of Labor has not notified the assigned operator in writing that the requirements of this paragraph have not been satisfied.

(4) Use of prepayment

The Combined Fund shall—

(A) establish and maintain an account for each assigned operator or related person by, or on whose behalf, a payment described in paragraph (3) was made,

(B) credit such account with such payment (and any earnings thereon), and

(C) use all amounts in such account exclusively to pay premiums that would (but for this subsection) be required to be paid by the assigned operator.

Upon termination of the obligations for the premium liability of any assigned operator or related person for which such account is maintained, all funds remaining in such account (and earnings thereon) shall be refunded to such person as may be designated by the common parent described in paragraph (1)(B).

(Added Pub. L. 102-486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3042; amended Pub. L. 103-296, title I, §108(h)(9)(A), Aug. 15, 1994, 108 Stat. 1487; Pub. L. 109-432, div. C, title II, §§211(a), 212(a)(2), Dec. 20, 2006, 120 Stat. 3020, 3024.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109-432, §212(a)(2)(A), reenacted heading without change and amended text of sub-

sec. (d) generally. Prior to amendment, text read as follows: "The unassigned beneficiaries premium for any plan year for any assigned operator shall be equal to the applicable percentage of the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries who are not assigned under section 9706 to any person for such plan year."

Subsec. (e)(1). Pub. L. 109-432, §212(a)(2)(B)(i), inserted "and amounts transferred under section 9705(b)" after "premiums received".

Subsec. (e)(3)(A). Pub. L. 109-432, §212(a)(2)(B)(ii), inserted at end "Amounts credited to an account from amounts transferred under section 9705(b) shall not be taken into account in determining whether there is a surplus in the account for purposes of this paragraph."

Subsec. (f)(2)(C). Pub. L. 109-432, §212(a)(2)(C), added subpar. (C).

Subsec. (j). Pub. L. 109-432, §211(a), added subsec. (j). 1994—Subsecs. (b)(2), (h). Pub. L. 103-296 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. C, title II, §212(a)(4), Dec. 20, 2006, 120 Stat. 3025, provided that: "The amendments made by this subsection [amending this section and sections 9705 and 9706 of this title] shall apply to plan years of the Combined Fund beginning after September 30, 2006."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

§ 9705. Transfers**(a) Transfer of assets from 1950 UMWA Pension Plan****(1) In general**

From the funds reserved under paragraph (2), the board of trustees of the 1950 UMWA Pension Plan shall transfer to the Combined Fund—

(A) \$70,000,000 on February 1, 1993,

(B) \$70,000,000 on October 1, 1993, and

(C) \$70,000,000 on October 1, 1994.

(2) Reservation

Immediately upon the enactment date, the board of trustees of the 1950 UMWA Pension Plan shall segregate \$210,000,000 from the general assets of the plan. Such funds shall be held in the plan until disbursed pursuant to paragraph (1). Any interest on such funds shall be deposited into the general assets of the 1950 UMWA Pension Plan.

(3) Use of funds

Amounts transferred to the Combined Fund under paragraph (1) shall—

(A) in the case of the transfer on February 1, 1993, be used to proportionately reduce the premium of each assigned operator under section 9704(a) for the plan year of the Fund beginning February 1, 1993, and

(B) in the case of any other such transfer, be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) and the death benefit premium under section 9704(a)(2) of each assigned operator for the plan year in which transferred and for any subsequent plan year in which such funds remain available.

Such funds may not be used to pay any amounts required to be paid by the 1988 agreement operators under section 9704(i)(1)(B).

(4) Tax treatment; validity of transfer

(A) No deduction

No deduction shall be allowed under this title with respect to any transfer pursuant to paragraph (1), but such transfer shall not adversely affect the deductibility (under applicable provisions of this title) of contributions previously made by employers, or amounts hereafter contributed by employers, to the 1950 UMW Pension Plan, the 1950 UMW Benefit Plan, the 1974 UMW Pension Plan, the 1974 UMW Benefit Plan, the 1992 UMW Benefit Plan, or the Combined Fund.

(B) Other tax provisions

Any transfer pursuant to paragraph (1)—

(i) shall not be treated as an employer reversion from a qualified plan for purposes of section 4980, and

(ii) shall not be includible in the gross income of any employer maintaining the 1950 UMW Pension Plan.

(5) Treatment of transfer

Any transfer pursuant to paragraph (1) shall not be deemed to violate, or to be prohibited by, any provision of law, or to cause the settlors, joint board of trustees, employers or any related person to incur or be subject to liability, taxes, fines, or penalties of any kind whatsoever.

(b) Transfers

(1) In general

The Combined Fund shall include any amount transferred to the Fund under subsections (h) and (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)).

(2) Use of funds

Any amount transferred under paragraph (1) for any fiscal year shall be used to pay benefits and administrative costs of beneficiaries of the Combined Fund or for such other purposes as are specifically provided in the Acts¹ described in paragraph (1).

(Added Pub. L. 102-486, title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3046; amended Pub. L. 109-432, div. C, title II, § 212(a)(1), Dec. 20, 2006, 120 Stat. 3023.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109-432, § 212(a)(1)(C), struck out “from abandoned mine reclamation fund” after “Transfers” in heading.

Subsec. (b)(1). Pub. L. 109-432, § 212(a)(1)(A), substituted “subsections (h) and (i) of section 402” for “section 402(h)”.

Subsec. (b)(2). Pub. L. 109-432, § 212(a)(1)(B), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: “Any amount transferred under paragraph (1) for any fiscal year shall be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) of each assigned operator for the plan year in which transferred.”

¹ So in original. Probably should be “Act”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable to plan years of the Combined Fund beginning after Sept. 30, 2006, see section 212(a)(4) of Pub. L. 109-432, set out as a note under section 9704 of this title.

§ 9706. Assignment of eligible beneficiaries

(a) In general

For purposes of this chapter, the Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:

(1) First, to the signatory operator which—

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which—

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement.

(b) Rules relating to employment and reassignment upon purchase

For purposes of subsection (a)—

(1) Aggregation rules

(A) Related person

Any employment of a coal industry retiree in the coal industry by a signatory operator shall be treated as employment by any related persons to such operator.

(B) Certain employment disregarded

Employment with—

(i) a person which is (and all related persons with respect to which are) no longer in business, or

(ii) a person during a period during which such person was not a signatory to a coal wage agreement,

shall not be taken into account.

(2) Reassignment upon purchase

If a person becomes a successor of an assigned operator after the enactment date, the assigned operator may transfer the assignment of an eligible beneficiary under subsection (a) to such successor, and such successor shall be treated as the assigned operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the assigned operator transferring such assignment (and any related

person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. An assigned operator shall notify the trustees of the Combined Fund of any transfer described in this paragraph.

(c) Identification of eligible beneficiaries

The 1950 UMW Benefit Plan and the 1974 UMW Benefit Plan shall, by the later of October 1, 1992, or the twentieth day after the enactment date, provide to the Commissioner of Social Security a list of the names and social security account numbers of each eligible beneficiary, including each deceased eligible beneficiary if any other individual is an eligible beneficiary by reason of a relationship to such deceased eligible beneficiary. In addition, the plans shall provide, where ascertainable from plan records, the names of all persons described in subsection (a) with respect to any eligible beneficiary or deceased eligible beneficiary.

(d) Cooperation by other agencies and persons

(1) Cooperation

The head of any department, agency, or instrumentality of the United States shall cooperate fully and promptly with the Commissioner of Social Security in providing information which will enable the Commissioner to carry out his responsibilities under this section.

(2) Providing of information

(A) In general

Notwithstanding any other provision of law, including section 6103, the head of any other agency, department, or instrumentality shall, upon receiving a written request from the Commissioner of Social Security in connection with this section, cause a search to be made of the files and records maintained by such agency, department, or instrumentality with a view to determining whether the information requested is contained in such files or records. The Commissioner shall be advised whether the search disclosed the information requested, and, if so, such information shall be promptly transmitted to the Commissioner, except that if the disclosure of any requested information would contravene national policy or security interests of the United States, or the confidentiality of census data, the information shall not be transmitted and the Commissioner shall be so advised.

(B) Limitation

Any information provided under subparagraph (A) shall be limited to information necessary for the Commissioner to carry out his duties under this section.

(3) Trustees

The trustees of the Combined Fund, the 1950 UMW Benefit Plan, the 1974 UMW Benefit Plan, the 1950 UMW Pension Plan, and the 1974 UMW Pension Plan shall fully and promptly cooperate with the Commissioner in furnishing, or assisting the Commissioner to obtain, any information the Commissioner needs to carry out the Commissioner's responsibilities under this section.

(e) Notice by Commissioner

(1) Notice to Fund

The Commissioner of Social Security shall advise the trustees of the Combined Fund of the name of each person identified under this section as an assigned operator, and the names and social security account numbers of eligible beneficiaries with respect to whom he is identified.

(2) Other notice

The Commissioner of Social Security shall notify each assigned operator of the names and social security account numbers of eligible beneficiaries who have been assigned to such person under this section and a brief summary of the facts related to the basis for such assignments.

(f) Reconsideration by Commissioner

(1) In general

Any assigned operator receiving a notice under subsection (e)(2) with respect to an eligible beneficiary may, within 30 days of receipt of such notice, request from the Commissioner of Social Security detailed information as to the work history of the beneficiary and the basis of the assignment.

(2) Review

An assigned operator may, within 30 days of receipt of the information under paragraph (1), request review of the assignment. The Commissioner of Social Security shall conduct such review if the Commissioner finds the operator provided evidence with the request constituting a prima facie case of error.

(3) Results of review

(A) Error

If the Commissioner of Social Security determines under a review under paragraph (2) that an assignment was in error—

(i) the Commissioner shall notify the assigned operator and the trustees of the Combined Fund and the trustees shall reduce the premiums of the operator under section 9704 by (or if there are no such premiums, repay) all premiums paid under section 9704 with respect to the eligible beneficiary, and

(ii) the Commissioner shall review the beneficiary's record for reassignment under subsection (a).

(B) No error

If the Commissioner of Social Security determines under a review conducted under paragraph (2) that no error occurred, the Commissioner shall notify the assigned operator.

(4) Determinations

Any determination by the Commissioner of Social Security under paragraph (2) or (3) shall be final.

(5) Payment pending review

An assigned operator shall pay the premiums under section 9704 pending review by the Commissioner of Social Security or by a court under this subsection.

(6) Private actions

Nothing in this section shall preclude the right of any person to bring a separate civil action against another person for responsibility for assigned premiums, notwithstanding any prior decision by the Commissioner.

(g) Confidentiality of information

Any person to which information is provided by the Commissioner of Social Security under this section shall not disclose such information except in any proceedings related to this section. Any civil or criminal penalty which is applicable to an unauthorized disclosure under section 6103 shall apply to any unauthorized disclosure under this section.

(h) Assignments as of October 1, 2007**(1) In general**

Subject to the premium obligation set forth in paragraph (3), the Commissioner of Social Security shall—

(A) revoke all assignments to persons other than 1988 agreement operators for purposes of assessing premiums for plan years beginning on and after October 1, 2007; and

(B) make no further assignments to persons other than 1988 agreement operators, except that no individual who becomes an unassigned beneficiary by reason of subparagraph (A) may be assigned to a 1988 agreement operator.

(2) Reassignment upon purchase

This subsection shall not be construed to prohibit the reassignment under subsection (b)(2) of an eligible beneficiary.

(3) Liability of persons during three fiscal years beginning on and after October 1, 2007

In the case of each of the fiscal years beginning on October 1, 2007, 2008, and 2009, each person other than a 1988 agreement operator shall pay to the Combined Fund the following percentage of the amount of annual premiums that such person would otherwise be required to pay under section 9704(a), determined on the basis of assignments in effect without regard to the revocation of assignments under paragraph (1)(A):

(A) For the fiscal year beginning on October 1, 2007, 55 percent.

(B) For the fiscal year beginning on October 1, 2008, 40 percent.

(C) For the fiscal year beginning on October 1, 2009, 15 percent.

(Added Pub. L. 102-486, title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3047; amended Pub. L. 103-296, title I, § 108(h)(9)(B), Aug. 15, 1994, 108 Stat. 1487; Pub. L. 109-432, div. C, title II, § 212(a)(3), Dec. 20, 2006, 120 Stat. 3025.)

AMENDMENTS

2006—Subsec. (h). Pub. L. 109-432 added subsec. (h).

1994—Subsecs. (a), (c) to (g). Pub. L. 103-296 substituted “Commissioner of Social Security” for “Secretary of Health and Human Services”, “Commissioner” for “Secretary”, and “Commissioner’s” for “Secretary’s”, wherever appearing in text.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable to plan years of the Combined Fund beginning after Sept. 30,

2006, see section 212(a)(4) of Pub. L. 109-432, set out as a note under section 9704 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

PART III—ENFORCEMENT

Sec.

9707. Failure to pay premium.

§ 9707. Failure to pay premium**(a) Failures to pay****(1) Premiums for eligible beneficiaries**

There is hereby imposed a penalty on the failure of any assigned operator to pay any premium required to be paid under section 9704 with respect to any eligible beneficiary.

(2) Contributions required under the mining laws

There is hereby imposed a penalty on the failure of any person to make a contribution required under section 402(h)(5)(B)(ii) of the Surface Mining Control and Reclamation Act of 1977 to a plan referred to in section 402(h)(2)(C) of such Act. For purposes of applying this section, each such required monthly contribution for the hours worked of any individual shall be treated as if it were a premium required to be paid under section 9704 with respect to an eligible beneficiary.

(b) Amount of penalty

The amount of the penalty imposed by subsection (a) on any failure with respect to any eligible beneficiary shall be \$100 per day in the noncompliance period with respect to any such failure.

(c) Noncompliance period

For purposes of this section, the term “noncompliance period” means, with respect to any failure to pay any premium or installment thereof, the period—

(1) beginning on the due date for such premium or installment, and

(2) ending on the date of payment of such premium or installment.

(d) Limitations on amount of penalty**(1) In general**

No penalty shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed.

(2) Corrections

No penalty shall be imposed by subsection (a) on any failure if—

(A) such failure was due to reasonable cause and not to willful neglect, and

(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed.

(3) Waiver

In the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed by subsection (a) for failures to the extent that the Secretary determines, in his sole discretion, that the payment of such penalty would be excessive relative to the failure involved.

(e) Liability for penalty

The person failing to meet the requirements of section 9704 shall be liable for the penalty imposed by subsection (a).

(f) Treatment

For purposes of this title, the penalty imposed by this section shall be treated in the same manner as the tax imposed by section 4980B.

(Added Pub. L. 102-486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3050; amended Pub. L. 104-188, title I, §1704(t)(65), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 109-432, div. C, title II, §213(b)(1), Dec. 20, 2006, 120 Stat. 3027.)

REFERENCES IN TEXT

Section 402 of the Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (a)(2), is classified to section 1232 of Title 30, Mineral Lands and Mining.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-432 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “There is hereby imposed a penalty on the failure of any assigned operator to pay any premium required to be paid under section 9704 with respect to any eligible beneficiary.”

1996—Subsec. (d)(1). Pub. L. 104-188 struck out comma after “diligence”.

PART IV—OTHER PROVISIONS

Sec.
9708. Effect on pending claims or obligations.

§ 9708. Effect on pending claims or obligations

All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter, including all liability for contributions to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for coal production on and after February 1, 1993. However, nothing in this chapter is intended to have any effect on any claims or obligations arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims or obligations based on the “evergreen” clause found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan. This chapter shall not be construed to affect any rights of subrogation of any 1988 agreement operator with respect to contributions due to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of February 1, 1993.

(Added Pub. L. 102-486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3051.)

Subchapter C—Health Benefits of Certain Miners

Part
I. Individual employer plans.
II. 1992 UMWA benefit plan.

PART I—INDIVIDUAL EMPLOYER PLANS

Sec.
9711. Continued obligations of individual employer plans.

§ 9711. Continued obligations of individual employer plans**(a) Coverage of current recipients**

The last signatory operator of any individual who, as of February 1, 1993, is receiving retiree health benefits from an individual employer plan maintained pursuant to a 1978 or subsequent coal wage agreement shall continue to provide health benefits coverage to such individual and the individual's eligible beneficiaries which is substantially the same as (and subject to all the limitations of) the coverage provided by such plan as of January 1, 1992. Such coverage shall continue to be provided for as long as the last signatory operator (and any related person) remains in business.

(b) Coverage of eligible recipients**(1) In general**

The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

(2) Coverage

Subject to the provisions of subsection (d), health benefits coverage is described in this paragraph if it is substantially the same as (and subject to all the limitations of) the coverage provided by the individual employer plan as of January 1, 1992. Such coverage shall continue for as long as the last signatory operator (and any related person) remains in business.

(c) Joint and several liability of related persons**(1) In general**

Except as provided in paragraph (2), each related person of a last signatory operator to which subsection (a) or (b) applies shall be jointly and severally liable with the last signatory operator for the provision of health care coverage described in subsection (a) or (b).

(2) Liability limited if security provided

If—

(A) security meeting the requirements of paragraph (3) is provided by or on behalf of—

(i) any last signatory operator which is an assigned operator described in section 9704(j)(2), or

(ii) any related person to any last signatory operator described in clause (i), and

(B) the common parent of the controlled group of corporations described in section 9704(j)(2)(B) is jointly and severally liable for the provision of health care under this section which, but for this paragraph, would be required to be provided by the last signatory operator or related person,

then, as of the date the security is provided, such common parent (and no other person) shall be liable for the provision of health care under this section which the last signatory operator or related person would otherwise be required to provide. Security may be provided under this paragraph without regard to whether a payment was made under section 9704(j).

(3) Security

Security meets the requirements of this paragraph if—

(A) the security—

(i) is in the form of a bond, letter of credit, or cash escrow,

(ii) is provided to the trustees of the 1992 UMWA Benefit Plan solely for the purpose of paying premiums for beneficiaries who would be described in section 9712(b)(2)(B) if the requirements of this section were not met by the last signatory operator, and

(iii) is in an amount equal to 1 year of liability of the last signatory operator under this section, determined by using the average cost of such operator's liability during the prior 3 calendar years;

(B) the security is in addition to any other security required under any other provision of this title; and

(C) the security remains in place for 5 years.

(4) Refunds of security

The remaining amount of any security provided under this subsection (and earnings thereon) shall be refunded to the last signatory operator as of the earlier of—

(A) the termination of the obligations of the last signatory operator under this section, or

(B) the end of the 5-year period described in paragraph (4)(C).¹

(d) Managed care and cost containment

The last signatory operator shall not be treated as failing to meet the requirements of subsection (a) or (b) if benefits are provided to eligible beneficiaries under managed care and cost containment rules and procedures described in section 9712(c) or agreed to by the last signatory operator and the United Mine Workers of America.

(e) Treatment of noncovered employees

The existence, level, and duration of benefits provided to former employees of a last signatory operator (and their eligible beneficiaries) who are not otherwise covered by this chapter and who are (or were) covered by a coal wage agreement shall only be determined by, and shall be subject to, collective bargaining, lawful unilateral action, or other applicable law.

¹ So in original. Probably should be “paragraph (3)(C).”

(f) Eligible beneficiary

For purposes of this section, the term “eligible beneficiary” means any individual who is eligible for health benefits under a plan described in subsection (a) or (b) by reason of the individual's relationship with the retiree described in such subsection (or to an individual who, based on service and employment history at the time of death, would have been so described but for such death).

(g) Rules applicable to this part and part II

For purposes of this part and part II—

(1) Successor

The term “last signatory operator” shall include a successor in interest of such operator.

(2) Reassignment upon purchase

If a person becomes a successor of a last signatory operator after the enactment date, the last signatory operator may transfer any liability of such operator under this chapter with respect to an eligible beneficiary to such successor, and such successor shall be treated as the last signatory operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the last signatory operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. A last signatory operator shall notify the trustees of the 1992 UMWA Benefit Plan of any transfer described in this paragraph.

(Added Pub. L. 102-486, title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3051; amended Pub. L. 109-432, div. C, title II, § 211(b), Dec. 20, 2006, 120 Stat. 3022.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109-432 reenacted heading without change and amended text of subsec. (c) generally. Prior to amendment, text read as follows: “Each related person of a last signatory operator to which subsection (a) or (b) applies shall be jointly and severally liable with the last signatory operator for the provision of health care coverage described in subsection (a) or (b).”

PART II—1992 UMWA BENEFIT PLAN

Sec.

9712. Establishment and coverage of 1992 UMWA Benefit Plan.

§ 9712. Establishment and coverage of 1992 UMWA Benefit Plan

(a) Creation of plan

(1) In general

As soon as practicable after the enactment date, the settlors shall create a separate private plan which shall be known as the United Mine Workers of America 1992 Benefit Plan. For purposes of this title, the 1992 UMWA Benefit Plan shall be treated as an organization exempt from taxation under section 501(a). The settlors shall be responsible for designing the structure, administration and terms of the 1992 UMWA Benefit Plan, and for appointment and removal of the members of the board of trustees. The board of trustees shall initially

consist of five members and shall thereafter be the number set by the settlors.

(2) Treatment of plan

The 1992 UMWA Benefit Plan shall be—

(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)),

(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

(3) Transfers under other Federal statutes

(A) In general

The 1992 UMWA Benefit Plan shall include any amount transferred to the plan under subsections (h) and (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232).

(B) Use of funds

Any amount transferred under subparagraph (A) for any fiscal year shall be used to provide the health benefits described in subsection (c) with respect to any beneficiary for whom no monthly per beneficiary premium is paid pursuant to paragraph (1)(A) or (3) of subsection (d).

(4) Special rule for 1993 plan

(A) In general

The plan described in section 402(h)(2)(C) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)(2)(C)) shall include any amount transferred to the plan under subsections (h) and (i) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232).

(B) Use of funds

Any amount transferred under subparagraph (A) for any fiscal year shall be used to provide the health benefits described in section 402(h)(2)(C)(i) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)(2)(C)(i)) to individuals described in section 402(h)(2)(C) of such Act (30 U.S.C. 1232(h)(2)(C)).

(b) Coverage requirement

(1) In general

The 1992 UMWA Benefit Plan shall only provide health benefits coverage to any eligible beneficiary who is not eligible for benefits under the Combined Fund and shall not provide such coverage to any other individual.

(2) Eligible beneficiary

For purposes of this section, the term “eligible beneficiary” means an individual who—

(A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or

(B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the

applicable last signatory operator or any related person,

and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

(c) Health benefits

(1) In general

The 1992 UMWA Benefit Plan shall provide health care benefits coverage to each eligible beneficiary which is substantially the same as (and subject to all the limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

(2) Managed care

The 1992 UMWA Benefit Plan shall develop managed care and cost containment rules which shall be applicable to the payment of benefits under this subsection. Application of such rules shall not cause the plan to be treated as failing to meet the requirements of this subsection. Such rules shall preserve freedom of choice while reinforcing managed care network use by allowing a point of service decision as to whether a network medical provider will be used. Major elements of such rules may include, but are not limited to, elements described in paragraph (3).

(3) Major elements of rules

Elements described in this paragraph are—

(A) implementing formulary for drugs and subjecting the prescription program to a rigorous review of appropriate use,

(B) obtaining a unit price discount in exchange for patient volume and preferred provider status with the amount of the potential discount varying by geographic region,

(C) limiting benefit payments to physicians to the allowable charge under title XVIII of the Social Security Act, while protecting beneficiaries from balance billing by providers,

(D) utilizing, in the claims payment function “appropriateness of service” protocols under title XVIII of the Social Security Act if more stringent,

(E) creating mandatory utilization review (UR) procedures, but placing the responsibility to follow such procedures on the physician or hospital, not the beneficiaries,

(F) selecting the most efficient physicians and state-of-the-art utilization management techniques, including ambulatory care techniques, for medical services delivered by the managed care network, and

(G) utilizing a managed care network provider system, as practiced in the health care industry, at the time medical services are needed (point-of-service) in order to receive maximum benefits available under this subsection.

(4) Last signatory operators

The board of trustees of the 1992 UMWA Benefit Plan shall permit any last signatory oper-

ator required to maintain an individual employer plan under section 9711 to utilize the managed care and cost containment rules and programs developed under this subsection if the operator elects to do so.

(5) Standards of quality

Any managed care system or cost containment adopted by the board of trustees of the 1992 UMWA Benefit Plan or by a last signatory operator may not be implemented unless it is approved by, and meets the standards of quality adopted by, a medical peer review panel, which has been established—

(A) by the settlors, or

(B) by the United Mine Workers of America and a last signatory operator or group of operators.

Standards of quality shall include accessibility to medical care, taking into account that accessibility requirements may differ depending on the nature of the medical need.

(d) Guarantee of benefits

(1) In general

All 1988 last signatory operators shall be responsible for financing the benefits described in subsection (c), in accordance with contribution requirements established in the 1992 UMWA Benefit Plan. Such contribution requirements, which shall be applied uniformly to each 1988 last signatory operator, on the basis of the number of eligible and potentially eligible beneficiaries attributable to each operator, shall include:

(A) the payment of an annual prefunding premium for all eligible and potentially eligible beneficiaries attributable to a 1988 last signatory operator,

(B) the payment of a monthly per beneficiary premium by each 1988 last signatory operator for each eligible beneficiary of such operator who is described in subsection (b)(2) and who is receiving benefits under the 1992 UMWA Benefit Plan, and

(C) the provision of security (in the form of a bond, letter of credit or cash escrow) in an amount equal to a portion of the projected future cost to the 1992 UMWA Benefit Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to the 1988 last signatory operator. If a 1988 last signatory operator is unable to provide the security required, the 1992 UMWA Benefit Plan shall require the operator to pay an annual prefunding premium that is greater than the premium otherwise applicable.

(2) Adjustments

The 1992 UMWA Benefit Plan shall provide for—

(A) annual adjustments of the per beneficiary premium to cover changes in the cost of providing benefits to eligible beneficiaries, and

(B) adjustments as necessary to the annual prefunding premium to reflect changes in the cost of providing benefits to eligible beneficiaries for whom per beneficiary premiums are not paid.

(3) Additional liability

Any last signatory operator who is not a 1988 last signatory operator shall pay the monthly per beneficiary premium under paragraph (1)(B) for each eligible beneficiary described in such paragraph attributable to that operator.

(4) Joint and several liability

A 1988 last signatory operator or last signatory operator described in paragraph (3), and any related person to any such operator, shall be jointly and severally liable with such operator for any amount required to be paid by such operator under this section. The provisions of section 9711(c)(2) shall apply to any last signatory operator described in such section (without regard to whether security is provided under such section, a payment is made under section 9704(j), or both) and if security meeting the requirements of section 9711(c)(3) is provided, the common parent described in section 9711(c)(2)(B) shall be exclusively responsible for any liability for premiums under this section which, but for this sentence, would be required to be paid by the last signatory operator or any related person.

(5) Deductibility

Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

(6) 1988 last signatory operator

For purposes of this section, the term “1988 last signatory operator” means a last signatory operator which is a 1988 agreement operator.

(Added Pub. L. 102-486, title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3053; amended Pub. L. 109-432, div. C, title II, §§ 211(c), 212(b)(1)–(2)(B), Dec. 20, 2006, 120 Stat. 3023, 3025, 3026.)

AMENDMENT OF SUBSECTION (d)

Pub. L. 109-432, div. C, title II, § 212(b)(2), Dec. 20, 2006, 120 Stat. 3026, provided that, applicable to fiscal years beginning on or after Oct. 1, 2010, subsection (d) of this section is amended as follows:

(1) by amending paragraph (1) to read as follows:

“(1) In general

“All 1988 last signatory operators shall be responsible for financing the benefits described in subsection (c) by meeting the following requirements in accordance with the contribution requirements established in the 1992 UMWA Benefit Plan:

“(A) The payment of a monthly per beneficiary premium by each 1988 last signatory operator for each eligible beneficiary of such operator who is described in subsection (b)(2) and who is receiving benefits under the 1992 UMWA Benefit Plan.

“(B) The provision of a security (in the form of a bond, letter of credit, or cash escrow) in an amount equal to a portion of the projected future cost to the 1992 UMWA Benefit Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to the 1988 last signatory operator.

“(C) If the amounts transferred under subsection (a)(3) are less than the amounts required to be transferred to the 1992 UMWA Benefit Plan under subsections (h) and (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232), the payment of an additional backstop premium by each 1988 last signatory operator which is equal to such operator’s share of the amounts required to be so transferred but which were not so transferred, determined on the basis of the number of eligible and potentially eligible beneficiaries attributable to the operator.”;

(2) in paragraph (2)(B), by substituting “backstop” for “prefunding”; and

(3) in paragraph (3), by substituting “paragraph (1)(A)” for “paragraph (1)(B)”.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3)(C), (D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (a)(3), (4). Pub. L. 109-432, §212(b)(1), added pars. (3) and (4).

Subsec. (d)(4). Pub. L. 109-432, §211(c), inserted at end “The provisions of section 9711(c)(2) shall apply to any last signatory operator described in such section (without regard to whether security is provided under such section, a payment is made under section 9704(j), or both) and if security meeting the requirements of section 9711(c)(3) is provided, the common parent described in section 9711(c)(2)(B) shall be exclusively responsible for any liability for premiums under this section which, but for this sentence, would be required to be paid by the last signatory operator or any related person.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. C, title II, §212(b)(2)(C), Dec. 20, 2006, 120 Stat. 3026, provided that: “The amendments made by this paragraph [amending this section] shall apply to fiscal years beginning on or after October 1, 2010.”

Subchapter D—Other Provisions

Sec.	
9721.	Civil enforcement.
9722.	Sham transactions.

§ 9721. Civil enforcement

The provisions of section 4301 of the Employee Retirement Income Security Act of 1974 shall apply, in the same manner as any claim arising out of an obligation to pay withdrawal liability under subtitle E of title IV of such Act, to any claim—

- (1) arising out of an obligation to pay any amount required to be paid by this chapter; or
- (2) arising out of an obligation to pay any amount required by section 402(h)(5)(B)(ii) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)(5)(B)(ii)).

(Added Pub. L. 102-486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3055; amended Pub. L. 109-432, div. C, title II, §213(b)(2), Dec. 20, 2006, 120 Stat. 3027.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93-406, Sept. 2, 1974,

88 Stat. 829, as amended. Subtitle E of title IV of the Act is classified generally to subtitle E (§1381 et seq.) of subchapter III of chapter 18 of Title 29, Labor. Section 4301 of the Act is classified to section 1451 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

2006—Pub. L. 109-432 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “The provisions of section 4301 of the Employee Retirement Income Security Act of 1974 shall apply to any claim arising out of an obligation to pay any amount required to be paid by this chapter in the same manner as any claim arising out of an obligation to pay withdrawal liability under subtitle E of title IV of such Act. For purposes of the preceding sentence, a signatory operator and related persons shall be treated in the same manner as employers.”

§ 9722. Sham transactions

If a principal purpose of any transaction is to evade or avoid liability under this chapter, this chapter shall be applied (and such liability shall be imposed) without regard to such transaction.

(Added Pub. L. 102-486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3056.)

Subtitle K—Group Health Plan Requirements

Chapter		Sec. ¹
100.	Group health plan requirements	9801

AMENDMENTS

1997—Pub. L. 105-34, title XV, §1531(a)(1), Aug. 5, 1997, 111 Stat. 1080, struck out “Portability, Access, and Renewability” before “Requirements” in subtitle heading and made similar change in item for chapter 100.

CHAPTER 100—GROUP HEALTH PLAN REQUIREMENTS

Subchapter		Sec. ¹
A.	Requirements relating to portability, access, and renewability	9801
B.	Other requirements	9811
C.	General provisions	9831

AMENDMENTS

1997—Pub. L. 105-34, title XV, §1531(a)(1), Aug. 5, 1997, 111 Stat. 1080, struck out “PORTABILITY, ACCESS, AND RENEWABILITY” in chapter heading and added analysis for chapter.

Subchapter A—Requirements Relating to Portability, Access, and Renewability

Sec.	
9801.	Increased portability through limitation on preexisting condition exclusions.
9802.	Prohibiting discrimination against individual participants and beneficiaries based on health status.
9803.	Guaranteed renewability in multiemployer plans and certain multiple employer welfare arrangements.
[9804-9806. Renumbered.]	

AMENDMENTS

1997—Pub. L. 105-34, title XV, §1531(a)(1), Aug. 5, 1997, 111 Stat. 1081, added subchapter heading and items 9801

¹ Section number editorially supplied.

¹ Section numbers editorially supplied.